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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Fiftieth session
Item 9 of the provisional agenda

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS

Written statement submitted by the International Federation of Human Rights
Leagues, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement
which is circulated in accordance with Economic and Social Council
resolution 1996/31.

[7 July 1998]

1. The International Federation of Human Rights Leagues and its member organizations, the Committee on the Administration of Justice (CAJ) in Northern Ireland and the Irish Council for Civil Liberties (ICCL) in the Republic of Ireland, continue to be concerned about the situation of human rights in Ireland, North and South. While we warmly welcome the Good Friday Agreement, it is crucial that the human rights aspects of the agreement are fully and speedily implemented if a lasting peace is to be secured. At the time of writing, human rights NGOs are concerned that the Government's plans to implement the human rights aspects of the agreement will minimize, rather than maximize their impact. In addition, there are a number of matters to which the United Kingdom Government should give immediate priority, in particular the implementation of the recommendations of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy, in his recent report on Northern Ireland (E/CN.4/1998/39/Add.4).

2. In the Republic of Ireland there are also problems arising from the use of emergency powers in response to the Northern Ireland conflict and the Good Friday Agreement provides for new measures to protect human rights in the Republic as well as in Northern Ireland.

Northern Ireland

3. The FIDH and CAJ believe that the agreement reached in the multi-party negotiations in Northern Ireland represents a very positive step in terms of securing effective protection for the rights of all in Northern Ireland. The agreement contains commitments to establish a Human Rights Commission and a new Bill of Rights, an independent commission to bring forward proposals for the future of policing, a review of the criminal justice system and measures to promote equality.

4. The FIDH and CAJ believe that the human rights aspects of the agreement must be implemented fully. In addition we believe that there are a number of matters where immediate action should be taken to maintain the momentum of the peace process and ensure an end to ongoing human rights violations.

5. Accordingly we urge the United Kingdom Government to implement the recommendations of the Special Rapporteur on the independence of judges and lawyers following his visit to Northern Ireland and England in October 1997. As NGOs who have monitored the problems he examines, we welcome his report and agree with his conclusions that RUC (Royal Ulster Constabulary) officers have engaged in systematic abuse of defence lawyers in Northern Ireland and that there is a need for an independent judicial inquiry into allegations of official involvement in the murder of Belfast solicitor Patrick Finucane.

6. The Special Rapporteur also made a number of other important recommendations. We endorse them all, and in particular urge the United Kingdom Government to take immediate action in order to bring about:

(a) An end to deferral of access to legal advice for those held under emergency laws;

(b) The introduction of legislation to give suspects the right to have a solicitor present during police interviews;

(c) The restoration of the right to remain silent under police questioning;

(d) The extension of the PACE (Police and Criminal Evidence Act) standard for the admissibility of confession evidence to all cases;

(e) The restoration of the right to trial by jury;

(f) An end to the practice of closed prison visits in England and Wales;

(g) The exemption of lawyers' offices from official surveillance; and

(h) Training on international human rights laws for the judiciary and the police.

7. We note that while the United Kingdom Government welcomed the Special Rapporteur's report, it rejected all of its recommendations. We were intensely disappointed by this lack of any positive response, and hope that on reflection the Government will give serious consideration to the grave issues raised in the Special Rapporteur's report and will draw up specific plans for implementing its proposals urgently.

8. We further note that the Government of the Republic of Ireland concluded that the Special Rapporteur's observations and recommendations deserve very close attention. The Irish Government also expressed the view that his report "will be of considerable assistance in addressing the need to build confidence in the administration of justice on the part of both traditions in Northern Ireland". The Special Rapporteur concluded his address to the United Nations Commission on Human Rights in a similar vein, when he said:

"I am quite conscious of the fact that the ongoing peace talks in Northern Ireland are at a crucial stage. It is within this context that I concluded and made these recommendations in my report with the conviction that respect for the rule of law and human rights with greater confidence in public institutions showing transparency and accountability will enhance the prospects for a lasting peaceful settlement of the conflict."

9. We echo those sentiments. A just and durable peace will depend crucially on an independent, well-informed judiciary and on lawyers unhindered in their duties by abusive treatment at the hands of law-enforcement officials. It will also depend on respect for the rule of law, which these proposed reforms would do much to enhance.

The Republic of Ireland

10. Emergency legislation in the Republic of Ireland is based on the Offences Against the State Act 1939. This legislation has no provision for periodic reviews of its operations. It establishes a special non-jury court to try paramilitary-related offences, thus creating a two-tier justice system.

11. Under the emergency legislation, a police officer's opinion is accepted as evidence of an accused person's membership of an illegal organization, an offence carrying a maximum penalty of 10 years' imprisonment. It is also an offence for a suspect to refuse to give an account of his/her movements to the police.

12. Despite the ceasefires in Northern Ireland and the corresponding decline in the level of paramilitary violence in the Republic, the non-jury Special Criminal Court has remained in use. The United Nations Human Rights Committee said as long ago as 1993, before the ceasefires, that the continued use of the Special Criminal Court was no longer justified and expressed its concern about the extent of police powers in the Republic. In a worrying example of the tendency for emergency powers to become part of the ordinary law, the Irish authorities are now sending a number of serious non-paramilitary cases to be tried by the Special Criminal Court. The Good Friday Agreement commits the Irish Government to re-examining its emergency laws. We believe that it should end the use of this legislation and the Special Criminal Court forthwith and return to the ordinary rule of law.

13. In previous submissions (1997) we made reference to allegations of ill-treatment of persons arrested in connection with the murder of a police officer in 1996. The Government has failed to respond to calls for an independent inquiry into these allegations. The ICCL, together with British Irish Rights Watch, has compiled a report on these allegations which it forwarded recently to the Human Rights Committee. In May of this year, police shot and killed a member of a dissident paramilitary group in controversial circumstances during an attempted armed robbery. The Government has again ignored calls for an independent inquiry, while the powers of inquests are too restricted to allow for a thorough investigation of this incident. We believe that fully independent inquiries into these incidents are vital to maintaining confidence in the integrity of the police force and sending a clear signal that police misconduct will not be tolerated.

14. The Good Friday Agreement also commits the Irish Government to reconsidering a decision not to incorporate the European Convention on Human Rights into its domestic law and to establish a Human Rights Commission in parallel with one in Northern Ireland. We welcome these commitments and hope that the Irish Government will agree to incorporate the European Convention so as to provide the same level of access to the Convention as will be available in Northern Ireland. We very much welcome the commitment to establish Human Rights Commissions in both Irish jurisdictions but we are concerned that they may be given less power and independence than is recommended in the Paris Principles relating to the status of national institutions for the promotion and protection of human rights.

15. We believe that the British and Irish Governments should adhere to the best international practice in setting up these two Commissions and give them the widest possible powers and remits.

Conclusion

16. The peace agreement creates an unprecedented opportunity to put in place a new human rights regime that can give confidence to bruised and suspicious communities that they will not again be subject to the abuses of human rights that played a major role in initiating and sustaining the conflict in Northern Ireland with its spillover effects on Great Britain and the Republic of Ireland. The proposed political settlement will only succeed, however, if all communities can be assured that the law will be enforced fairly and impartially by security forces that enjoy the confidence and respect of all communities.



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Fiftieth session
Item 8 of the provisional agenda

PREVENTION OF DISCRIMINATION AGAINST AND THE PROTECTION OF MINORITIES

Written statement submitted by the Association for World Education,
a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[7 July 1998]

Blasphemy legislation in Pakistan's Penal Code

1. The Association for World Education submits the present written statement in memory of a prominent human rights defender, the late John Joseph, Bishop of Faisalabad, Chairman of the Human Rights Commission established by the Catholic Bishops' Conference of Pakistan, who killed himself on 6 May 1998 to protest the continued application of Pakistan's blasphemy laws.
2. Bishop John Joseph's suicide was related to the "blasphemy" case of Ayub Masih, who had been incarcerated in solitary confinement since 14 October 1996 and sentenced to death on 27 April 1998 by Sessions Court Judge Rana Abdul Ghaffar. The distinguished lawyer Ms. Asma Jahangir, who had secured the release of Salamat and Rehmet Masih in 1995 on a similar charge of blasphemy, is also involved in the defence of Ayub Masih. The appeal against the death sentence is still pending in the High Court.
3. A few hours before his tragic death, Bishop Joseph publicly declared that the charges were false and were merely concocted to force 15 Christian families to drop a local land dispute with Muslim villagers. In his last circular letter, published on 7 May in the Lahore edition of the newspaper Dawn, he strongly urged Church leaders, parliamentarians, Muslims, Christians, Hindus and all segments of society in Pakistan to support the campaign for the repeal of the iniquitous blasphemy laws. This legislation violates the international instruments that were signed and ratified by Pakistan.

Background to the introduction of the blasphemy legislation

4. During the presidency of General Zia ul-Haq (1977-1988) a Federal Shariat, or legal Court (FSC), was instituted, which was granted "jurisdiction over convictions or acquittals from district courts in cases involving ... Islamic criminal laws; exclusive jurisdiction to hear [petitions] ... challenging 'any law or provision of law' as repugnant to the Holy Koran; exclusive jurisdiction to examine 'any law or provision of law' for repugnancy to the Holy Koran" 1/ Although non-Muslims may not appear before the Shariat Court, they are subject to its rulings.
5. President Zia ul-Haq introduced the Hudood (Punishment) Ordinances in 1984, which "define crimes against Islam" and "enforce punishment for those who commit such crimes". In hudood cases, the testimony of a non-Muslim is considered to be worth half that of a Muslim. Section 298-B and 298-C of the Pakistan Penal Code singles out, pejoratively, the "non-Muslim" minority group Ahamadiyya - considered by Sunni theologians as heretics.

The Sub-Commission's 1985 reaction to Ordinance XX (1984)

6. Ordinance XX was incorporated into the 1985 Constitution. That year, the Sub-Commission adopted resolution 1985/21 in which the Sub-Commission:

"1. Expresses its grave concern at the promulgation by Pakistan of Ordinance XX of 28 April 1984 which, prima facie, violates the right to liberty and security of the person, the right to freedom of thought,

expression, conscience and religion, the right of religious minorities to profess and practise their own religion, and the right to an effective legal remedy;

"2. Further expresses its grave concern that persons charged with and arrested for violations of Ordinance XX have been reportedly subjected to various punishments and confiscations of personal property, and that the affected groups as a whole have been subjected to discrimination in employment and education and to the defacement of their religious property;

"3. Requests the Commission on Human Rights to call on the Government of Pakistan to repeal Ordinance XX and to restore the human rights and fundamental freedoms of all persons in its jurisdiction."

7. In 1986, the Government of Pakistan used the power granted it by Ordinance XX to insert section 295-C into the Pakistan Legal Code, making the death sentence mandatory for anyone convicted of blaspheming the Prophet Muhammad. From 1986 to 1993, over 200 Ahmadis were charged with "blasphemy" but none were convicted. Soon this law, originally directed at the Ahmadis, was being used primarily against Christians and also against Muslims, several of whom have been convicted.

8. In 1993 a further bill, generally supported by anti-Shi'a groups as a means of persecuting Shi'as, was introduced to extend the law to the defiling of the Prophet's family and companions.

9. An editorial in the Pakistani newspaper The Frontier Post stated: "Now, not only has theocracy been presented as a model for law and procedure, but discrimination on the basis of religion has become a part of the law." (Peter Jacob Dildar, "Minorities under the law", 18 June 1994).

10. On 10 February 1995, the United Nations special procedures system was used to send an urgent appeal to the Government of Pakistan regarding the cases of a 13-year-old illiterate boy, Salamat Masih - accused of having written blasphemous words on a mosque wall - and his uncle Rehmet Masih. A reply was received within four days and the international outcry in this case resulted in their release from prison; they fled to Europe.

11. Over a dozen Christians have been jailed under the blasphemy laws, four of whom were reported killed in detention. Ayub Masih is the fourth Christian to be condemned to death; the other three were acquitted on appeal and fled Pakistan. This is the background for Bishop John Joseph's tragic "sacrificial death".

A death sentence for "blasphemy" is illegitimate

12. The Association for World Education questions the legitimacy of Pakistan's blasphemy laws under the international instruments and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and fundamental human rights standards.

13. In addition to questioning the legitimacy of such blasphemy laws, our Association wishes to raise questions concerning the conditions in which trials for blasphemy are conducted: the right to a fair and speedy trial; the independence of the judiciary; the safety of defence lawyers; and the holding of the trial in a serene atmosphere, isolated from political, social and religious pressures. We ask the Sub-Commission to undertake inquiries as to whether Pakistan's courts are meeting these international human rights standards in all trials related to charges of blasphemy.

14. In particular, we wish to stress five points in regard to blasphemy charges under the section 295 of Pakistan's Penal Code:

(a) Blasphemy, as a civil crime under section 295-B and 295-C, is tried in civil courts where only Muslim judges may hear cases;

(b) The death penalty is a punishment for blasphemy under section 295-C;

(c) Blasphemy accusations may be applied to non-Muslims, whose testimony is given less weight in court than Muslims;

(d) Blasphemy charges may be used to mask other, more material or political, motivations;

(e) Blasphemy charges are being increasingly used as a way of limiting discussion and debate - what has been called since 1989 the "Rushdie syndrome".

15. In a statement on 21 August 1992 to the forty-fourth session of the Sub-Commission, a member of the Sub-Commission, Mrs. Clair Palley, declared:

"This is not a century - and certainly the twenty-first century is not one - in which the death penalty should exist for heresy. I hope the Sub-Commission will, as a body, make it clear that both fatwas and the death penalty for heresy are themselves gross violations of human rights." (Verbatim transcription. See also E/CN.4/Sub.2/1992/SR.27, paras. 70-71).

A Sub-Commission resolution on "blasphemy" charges is a necessity

16. In the same spirit, the Association for World Education calls on the fiftieth session of the Sub-Commission to adopt a resolution along the lines that: "this is not a century, nor is the twenty-first century one, in which the death penalty should exist for blasphemy".

17. The use of an accusation of "blasphemy" - an ill-defined term which can be expanded to mean anything that any accuser dislikes - merits serious attention. Some accusations of "blasphemy" can be ill-disguised death threats - as was the case in 1994 regarding the United Nations Special Rapporteur for the Sudan, Mr. Gáspár Biró - and when they are not, they can be considered as sufficiently dangerous to lead to kowtowing, and even censorship at the United Nations.

18. The Association for World Education has provided essential facts about the "UN Blasphemy Affair" of 18 April 1997 in a Sub-Commission statement (E/CN.4/Sub.2/1997/NGO/3), in several oral statements made to last year's Sub-Commission and the fifty-fourth session of the Commission, and more fully in two out of three articles recently published. 2/

19. Such rigid doctrinal accusations of "blasphemy" - charges that are constantly revived to the detriment of basic human rights in Pakistan and elsewhere - merit unreserved condemnation by the United Nations now.

Notes

1/ Charles H. Kennedy, "Repugnancy to Islam - Who Decides? Islam and Legal Reform in Pakistan", in International and Comparative Law, vol. 41, Part 4, October 1992, p. 772.

2/ René Wadlow and David Littman, "Dangerous Censorship of a U.N. Special Rapporteur", Justice, No. 14, September 1997, pp. 10-17; "Blasphemy at the United Nations?", Middle East Quarterly, December 1997, pp. 85-86; "UN Special Rapporteur Censured on 'Islamist and Arab Antisemitism'", Midstream, February-March 1998, pp. 8-13.
